

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

ALICE H. ALLEN, et al.

V

DAIRY FARMERS OF AMERICA,  
INC., et al.

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CIVIL FILE NO. 09-230

TELEPHONE CONFERENCE  
Thursday, May 5, 2016  
Burlington, Vermont

BEFORE:

THE HONORABLE CHRISTINA R. REISS  
Chief District Judge

APPEARANCES:

BRENT W. JOHNSON, ESQ., EMMY L. LEVENS, ESQ., and  
KIT A. PIERSON, ESQ., Cohen Milstein Sellers &  
Toll PLLC, 1100 New York Avenue, N.W.,  
Washington, D.C.; Attorneys for the Plaintiffs

ROBERT G. ABRAMS, ESQ., DANYLL W. FOIX, ESQ.,  
BakerHostetler LLP, Washington Square, Suite  
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D.C.; Attorney for the Plaintiffs

Appearances Cont'd...

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APPEARANCES CONTINUED:

STEVEN R. KUNEY, ESQ. Williams & Connolly LLP,  
725 Twelfth Street, N.W., Washington, D.C.;  
Attorney for Defendant Dairy Farmers of America,  
Inc.

DANIEL J. SMITH, ESQ., Northeast Dairy Compact  
Commission Executive Director, 16 State Street,  
Montpelier, Vermont; Attorney for the  
Intervenors

RICHARD T. CASSIDY, ESQ. and MATTHEW M. SHAGAM,  
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1 THURSDAY, MAY 5, 2016

2 (The following was held in open court at 3:35 p.m.)

3 COURTROOM DEPUTY: Your Honor, the matter  
4 before the Court is civil case number 09-CV-230, Alice  
5 H. Allen, et al. versus Dairy Farmers of America, et al.  
6 Present for the plaintiffs on the telephone are Robert  
7 Abrams, Emmy Levens, Brent Johnson, Danyll Foix, Kit  
8 Pierson, Daniel Smith, Richard Cassidy and Matthew  
9 Shagam. Present for defendant is Steven Kuney via  
10 telephone.

11 THE COURT: Good afternoon. So you wanted to  
12 speak to me, and that's fine. We don't have great luck  
13 with the telephone, but one thing that makes it easier  
14 is that if you identify yourself each time you speak,  
15 even if I know your voice it's not guaranteed that the  
16 court reporter's going to know your voice. So tell me  
17 what you would like me to hear.

18 MR. PIERSON: Thank you, your Honor. This is  
19 Kit Pierson. And personally, thank you very much for  
20 doing this on short notice.

21 You know, we, as you can imagine, the lawyers, have  
22 been talking about the logistical issues presented by  
23 sort of the flood of letters and the number of people  
24 that have indicated they would like to speak at the  
25 hearing, and we wanted to really contact you about two

1 things. One was to let you know some information that  
2 we're pulling together in pretty short order that will  
3 be provided to the Court that I think will help with the  
4 logistics, and I will explain what that information is.

5 And then we wanted to -- we have got some questions  
6 that we are being asked about how the fairness hearing  
7 will be handled, and we have discussed among ourselves  
8 our own thoughts about -- or suggestions on some of the  
9 issues that occurred to us, but recognizing that, you  
10 know, it's a hundred percent up to the Court, and  
11 we're -- will offer our thoughts about issues we flagged  
12 and our thoughts on those, but understanding it will be  
13 handled however the Court wants to handle it.

14 The information that we're providing -- that we are  
15 going to provide, which I would anticipate being filed  
16 with final approval papers probably late in the day  
17 Monday, so probably after close of business -- but there  
18 are two charts that we're pulling together. One is a  
19 list of the people that have, consistent with the  
20 Court's -- with the procedures the Court provided in the  
21 notice, have indicated -- have provided notice that they  
22 would like to speak at the hearing, and I can tell you  
23 there -- our current understanding is that there are --  
24 there are six, I guess what I would say, class  
25 representative farms that are planning to speak, but

1       that includes -- one of those farms are the Haars, as  
2       you will remember from the last hearing, three of the  
3       Haars spoke at the hearing, so, you know, depending on  
4       how one wants to look at it, you can either look at it  
5       as eight people speaking or six farms, but -- so that's  
6       one cluster.

7               The other cluster are people who have indicated  
8       they intend to speak who are not class representatives,  
9       and our current count is that that is -- there are an  
10      additional 23 people, although I think -- my  
11      understanding is that there are letters that have been  
12      received that have not yet been docketed, so I think the  
13      number may actually be closer to about 30, but we will  
14      try to have that all figured out by Monday and get that  
15      information to the Court. We will file it as a pleading  
16      with the list of who falls into these two groups. You  
17      will have a list in front of you, part of our thinking  
18      on that.

19             The second thing we are pulling together is just --  
20      is a chart that has all -- that will list all the  
21      letters. I don't know the sequence they are listed in.  
22      It may be by docket number. I don't know. But it will  
23      list them all, and it will indicate -- you know, it will  
24      have a column that identifies whether someone supports  
25      the settlement, whether someone is objecting to the

1 settlement, or whether someone has opted out of the  
2 class. So we will provide that information, I think, in  
3 a granular way in the chart and we will also give you an  
4 aggregate so you will know the totals.

5 So that -- is there any questions about that?  
6 That's the information we will submit, and then I can  
7 talk about the issues that have occurred to us.

8 THE COURT: Okay. So you can continue to  
9 provide information if you want. I can tell you how I  
10 think it should unfold. Whatever you want to do next.

11 MR. PIERSON: All right. Well, maybe I should  
12 go ahead and give you our sort of preliminary -- well,  
13 the issues that occurred to us, and I will just flag  
14 them and then we will listen to how you want to handle  
15 it.

16 So, you know, the biggest concern that we have been  
17 talking through is just the number of people and how the  
18 mix -- we understand from the prior proceedings, you  
19 know, the Court has been very generous with people,  
20 letting people speak at these hearings, and so that sort  
21 of is our going-in assumption. And we're trying to  
22 figure out how to get that done.

23 There's one other consideration which I know is  
24 important to -- that a number of farmers have  
25 communicated with -- and some other lawyers can speak to

1       this if they need to, but the number of farmers that  
2       have expressed, you know, strong feelings to us that  
3       it's important to them that -- if that it's possible,  
4       that we get this done -- that we get at least their part  
5       of it done in one day. So that has been -- so we  
6       thought about how that could be accomplished. And the  
7       concern on the part of the farmers is that some of them  
8       are traveling a good distance, it's the planting season,  
9       and so we are hoping when they show up they will have  
10      the chance to speak.

11               THE COURT: But it isn't Rutland Dairy Days or  
12      anything, is it? It's not Rutland Dairy Day?

13               MR. PIERSON: Excuse me?

14               THE COURT: It's not Rutland Dairy Day or  
15      Vermont Dairy Day or anything that we are going to have  
16      this hearing? Remember that came up last time?

17               MR. PIERSON: Your Honor, I think that -- oh,  
18      go ahead, Danny.

19               MR. SMITH: Yeah, this is Danny Smith. I  
20      think you are safe this time, your Honor.

21               THE COURT: Okay. Thank you.

22               MR. PIERSON: No, the issue is just they are  
23      in the planting season, and so we are trying to do the  
24      best we can to accommodate them. But here are what we  
25      talked about, and I do want to just reiterate that we

1 understand -- we're really honoring this in the spirit  
2 of take it for what it's worth, and we will do -- do  
3 whatever the Court wants us to.

4 You know, we talked about whether it might make  
5 sense to start the hearing at nine a.m. instead of 10,  
6 and if we -- and how we could provide notice if we do  
7 that, which we think we are able to do.

8 One of the things we had talked about is -- the  
9 possibility would be to have the class representatives  
10 speak in the morning, and, you know, how much time they  
11 would all have would be obviously up to the Court, but  
12 we thought that if we had the class reps speak in the  
13 morning, and then had all the other farmers that had  
14 provided notice -- you know, had provided notice they  
15 intend to speak, speak in the afternoon, and our  
16 understanding is that with those farmers in general, I  
17 think our expectation would be that they're planning to  
18 speak, you know, relatively short duration most of them,  
19 five or 10 minutes. It's not probably true of all the  
20 class reps, but it's probably true of the rest of the  
21 farmers.

22 But our thought was that if we broke it down that  
23 way, that -- that all the farmers that had indicated an  
24 intention to speak ought to be able to speak in that  
25 day. Our assumption, again up to the Court, was that --



1 I mean, there are a number of groups of lawyers here.  
2 There's the -- you know, the DFA/DMS subclass. There's  
3 the non-DFA/DMS subclass. There's the defendants. That  
4 probably for the lawyers to do what we ought to do and  
5 to answer all the Court's questions, that that --  
6 probably two hours is reasonable for that. But it  
7 obviously does not have to occur on Friday. I think  
8 from our point of view it's more important to let the  
9 farmers who want to speak, speak.

10 And I think the only other issue that we had --  
11 there are sort of two other issues that we had talked  
12 about that I should flag. One is, you know, there's  
13 some concern -- because we know there're organized  
14 efforts to get farmers there, and if we -- you know,  
15 we're told there's, you know, like a bus load of farmers  
16 that may come. We wanted to be sure that the people  
17 that have provided notice to speak actually are able to  
18 get into the courtroom, because there is some  
19 possibility of crowd -- of a crowd.

20 And the one other issue, which I will just flag and  
21 then I will stop, is we have received questions from  
22 individuals, and I know other attorneys have received  
23 questions from individuals who are not class members  
24 either because they were never class members or they  
25 have opted out, but they are not class members, and they

1 haven't provided notice of an intention to speak, and  
2 basically the question was -- what was raised was should  
3 they show up, are they going to be able to speak anyway?  
4 And we just wanted to know if there's any guidance about  
5 what we ought to tell them on that.

6 So that's kind of our list, your Honor, and thanks  
7 for your patience.

8 THE COURT: Okay. I don't think we should  
9 start early. I think that we are going to need to get  
10 people through security, and it's just not going to work  
11 to move it up. And I want to avoid any conspiracy  
12 theory that the hearing is engineered to prevent people  
13 from X, Y or Z. I am just not going to go there. So we  
14 are going to start when we are going to start.

15 This is their fairness hearing, so I don't think I  
16 need two hours from the attorneys. Judges don't see  
17 that as the focus of a fairness hearing. This -- I have  
18 heard from you, you know. I will be very conversant  
19 with your papers, and if there's time, that's one thing,  
20 but this is for the purpose of class members to either  
21 support or object to the settlement, and that's really  
22 what I want to hear.

23 I am not really thinking that I would need another  
24 day, and I think that would feed into the conspiracy  
25 theory, to hear from the attorneys. So if something is

1 so disturbing that you need to respond in writing  
2 thereafter, that's fine. I don't plan on that  
3 happening, but, you know, if it happens, it happens.

4 I was going to limit the speakers to who actually  
5 followed the rules. Most of these people have already  
6 been through a fairness hearing, so they can't claim "I  
7 didn't know that, you know, this is how it went" and "I  
8 didn't understand what was going to happen."

9 This is -- we have had a dress rehearsal, and I am  
10 going to be less amenable to having people speak because  
11 they do understand what the process is, and there's just  
12 too many of them.

13 I was planning on limiting everybody, including  
14 class representatives because they really shouldn't have  
15 a different status than class members, to five minutes  
16 and keeping fairly religiously to that number. And so I  
17 didn't expect -- I mean, they have got an opportunity  
18 for written objections, and it's just not conceivable  
19 that we would have long diatribes or explanations, but  
20 we will see how that works.

21 And with that as the number, I thought we could  
22 probably get it in on one day, and if we can't, people  
23 are going to have to come back. But five minutes is  
24 actually a fair amount of time to say this is what I  
25 like, this is what I don't like, and I will provide

1 guidance. I'm good at redirecting people, as you know,  
2 when I think somebody is going off track and talking  
3 about things that the Court can't resolve. I will try  
4 to direct it to the settlement. So that's kind of what  
5 I was thinking.

6 In terms of if we have a class representative and  
7 they are husband and wife or father and son, I would  
8 expect that each of them could speak. I don't think  
9 people's children should be able to speak, so I don't  
10 want class members to get bumped out by nonclass  
11 members. And so, for example, I think the Haars should  
12 be able to speak. I don't know that we need to hear  
13 from their son. You know, I don't know that we are  
14 going to have enough time for that.

15 So I am going to be fairly mindful that the purpose  
16 is to give class members an opportunity to speak, and  
17 it's less about the lawyers and the class  
18 representatives because you have already told me what  
19 their positions are.

20 MR. PIERSON: That all seems fine to me,  
21 your Honor. I will let other counsel weigh in, but that  
22 all seems quite workable to me.

23 THE COURT: Anybody think that's not going to  
24 be workable or would be -- and you should be candid  
25 because we are still in the forming stage -- unfair,

1 arbitrary, capricious, any of those things?

2 MR. ABRAMS: Your Honor, this is Bob Abrams.  
3 And I -- I was happy to hear all your comments and  
4 proceed in the manner that you said. And I think it's  
5 helpful to us in answering questions as well that we're  
6 getting.

7 THE COURT: Okay.

8 MR. SMITH: Your Honor, this is Danny Smith.  
9 If I could just ask two questions --

10 THE COURT: Sure.

11 MR. SMITH: -- along that line.

12 So if I understand, the basic point is, we get a  
13 call, somebody says, "I didn't get my notice in in  
14 time," the answer is that only folks who did get their  
15 notices in in time will be authorized to speak?

16 THE COURT: Yes.

17 MR. SMITH: And second question, more mundane,  
18 recommendation as to what time folks should show up with  
19 that anticipated number of participants given the  
20 security based on your experience?

21 THE COURT: So our court security starts  
22 screening at eight, so it won't happen any earlier than  
23 that, but that's probably -- if you are here at eight,  
24 you will have a seat in the courtroom.

25 MR. SMITH: Okay, very helpful. Thank you.

1 MR. KUNEY: Your Honor, this is Steve Kuney.

2 I have one question, if I may?

3 THE COURT: Sure.

4 MR. KUNEY: I know it's been -- I know it's  
5 been an ordeal for the clerk's office to post all these  
6 filings. Where we find ourselves right now is that, you  
7 know, pursuant to the notice, people who intended to  
8 speak at the hearing were supposed to provide counsel  
9 with, you know, a cc. of their letter. We have a number  
10 of letters that we received that were mailed late last  
11 week that have not yet appeared on the court's docket.  
12 I don't know whether there's anything that we can or  
13 need or should do about that, but we believe they were  
14 timely filed and don't know whether the clerk has not  
15 completely caught up yet or whether there's something we  
16 should do to ensure that they don't lose out.

17 THE COURT: So the whole thing is a  
18 predicament in that we're getting lots and lots of  
19 paper, and rather than making a judicial determination  
20 as to is this a class member, is it timely, what should  
21 I do about it, we have just been -- and some of them  
22 aren't signed -- we have been docketing them as they --  
23 as the clerk's office can come -- you know, through the  
24 package, and they are going to show up on the docket.  
25 That's just the easiest way to do it. It's consistent

1 with my policy of openness.

2 We have had a couple requests for *in camera*  
3 inspection. I have explained that's not the way we are  
4 going to proceed. So that's the best I can do with the  
5 paper coming in is it will show up on the docket.

6 MR. KUNEY: Very well. Thank you, your Honor.

7 THE COURT: Anything else?

8 MR. PIERSON: I don't think so, your Honor.

9 Again, thank you for hearing us on short notice.

10 THE COURT: Okay. No problem. We'll see you  
11 soon.

12 (Court was in recess at 3:55 p.m.)

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17 C E R T I F I C A T I O N

18 I certify that the foregoing is a correct  
19 transcript from the record of proceedings in the  
above-entitled matter.

20



21 June 5, 2016  
22 Date

\_\_\_\_\_  
Anne Nichols Pierce

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